

Editor's note: Reconsideration denied by order dated June 29, 1982

GEORGE AZAR

IBLA 81-798

Decided April 8, 1982

Appeal from a decision of the Arizona State Office, Bureau of Land Management, denying the protest of the designation of unit 2-83 as a wilderness study area. 8500 (931)

Affirmed.

1. Federal Land Policy and Management Act of 1976: Wilderness--Wilderness Act--Words and Phrases

"Public Lands." Reclamation withdrawn lands on which there are no authorized or constructed reclamation projects are administered by the Bureau of Land Management under a memorandum of agreement between the Bureau of Reclamation and Bureau of Land Management (March 1972). In the absence of contrary language in an order withdrawing lands for reclamation purposes, reclamation withdrawn lands which do not have authorized or constructed projects on them are "public lands" within the meaning of secs. 103(e) and 603(a) of the Federal Land Policy and Management Act of 1976.

2. Federal Land Policy and Management Act of 1976: Wilderness--Wilderness Act

During the study phase of the wilderness review process, BLM will consider all values, resources, and uses of the lands within a wilderness study area.

3. Federal Land Policy and Management Act of 1976: Wilderness--Wilderness Act

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherry systems), thereby excluding such lands from wilderness review and permitting adjacent lands,

otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

APPEARANCES: George Azar, pro se; Dale D. Goble, Esq., Office of the Solicitor, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

George Azar appeals from a decision of the Acting Arizona State Director, Bureau of Land Management (BLM), dated March 12, 1981, denying his protest of the designation of inventory unit 2-83 as a wilderness study area (WSA). The designation of this unit was announced by the State Director in a Federal Register notice published on November 7, 1980, at 45 FR 74066.

The State Director's designation of WSA's was taken pursuant to section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976). That section directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands which were identified during the inventory required by section 201(a) of the Act as having wilderness characteristics described in the Wilderness Act of September 3, 1964, 16 U.S.C. § 1131(c) (1976). Following review of an area or island, the Secretary shall from time to time report to the President his recommendation as to the suitability or unsuitability of each such area or island for preservation as wilderness.

The wilderness characteristics alluded to in section 603(a) are defined in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1976):

A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

The review process undertaken by the State Office pursuant to section 603(a) has been divided into three phases by BLM: Inventory, study, and reporting. The State Director's announcement of designated wilderness study areas marks the end of the inventory phase of the review process and the beginning of the study phase.

Appellant presents a variety of arguments on appeal in opposition to the designation of unit 2-83 (Hassayampa River Canyon) as a WSA. His first argument charges that lands along the focal point of this unit, Hassayampa River, are within a first form reclamation withdrawal and, as such, are not public lands. Because the Secretary's authority to review for wilderness characteristics is limited by section 603 to public lands, appellant contends that BLM may not designate these withdrawn lands as a WSA. Inasmuch as these withdrawn lands are located along the unit's most outstanding feature, appellant seems to argue that the entire 21,800-acre unit fails to qualify as a WSA.

[1] Appellant is clearly correct in stating that lands within the Hassayampa WSA are within a first form reclamation withdrawal. His conclusion that such lands are not public lands within the meaning of section 603, however, is not so easily reached. "Public lands" are defined at section 103(e) of FLPMA to mean "any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership." 43 U.S.C. § 1702(e) (emphasis added). Inasmuch as there is no issue that the reclamation withdrawn lands are owned by the United States, appellant's argument requires that we decide whether such lands are administered by the Secretary of the Interior through BLM.

In March 1972, a memorandum of agreement (MOA) between the Bureau of Reclamation (BuRec) and BLM was prepared to set forth the principles and procedures for coordinating BuRec and BLM programs. In section 5, guidelines are set forth to govern supplemental agreements. Item 1 reads as follows:

1. Unless otherwise directed by the Secretary or agreed to mutually by Reclamation and Land Management pursuant to the terms and guidelines of this agreement, Reclamation will retain full responsibility for management of Reclamation lands on authorized or constructed Reclamation projects and Land Management will retain full responsibility for management of other Reclamation lands which are not within the boundaries of national forests or other agency reservations. [Emphasis added.]

There appears to be no issue that the reclamation withdrawn lands in unit 2-83 contain neither authorized nor constructed reclamation projects. Hence, by the terms of the MOA, BLM retains full responsibility for management of these lands. It is fair to conclude, therefore, that these lands are administered by the Secretary of the Interior through BLM, and, accordingly, are public lands within the meaning of section 603.

Our resolution of this issue has been guided by the able brief of counsel for BLM and by a memorandum of the Solicitor, dated June 17, 1981. On page 2 of this memorandum, the Solicitor writes: "[U]nless there is something in a public land order [withdrawing the lands] that is inconsistent with this interpretation, Reclamation withdrawn lands which do not have authorized or constructed projects on them are 'public lands' under Sec. 103(e) of FLPMA." (Emphasis in original.) There is no indication in the record that any of the four withdrawals affecting unit 2-83 is inconsistent with BLM's management of these lands.

[2] Appellant's second argument on appeal is the contention that the lands in unit 2-83 are rich in minerals and should not be "showcased" in a WSA. If, as appellant suggests, lands within unit 2-83 are rich in minerals, this fact will be considered by BLM during the study phase of wilderness review. During this phase, BLM will consider all values, resources, and uses of the lands. In addition, section 603(a) requires that prior to any recommendation for the designation of an area as wilderness, the Secretary shall cause mineral surveys to be conducted by the Geological Survey and the Bureau of Mines to determine mineral values. Although it is true that mineral values are not considered during the inventory phase of the wilderness review process, whatever mineral values do exist should surface during the study phase and prior to Secretarial recommendations. Appellant's participation during the study phase is invited. 43 FR 75574, 75575 (Nov. 14, 1980).

[3] Cherrystemming is the focus of appellant's final argument on appeal. Cherrystemming refers to BLM's practice of designating as nonwilderness corridors (cherrystems) lands occupied by roads or other intrusions that would seemingly disqualify a parcel from wilderness consideration. The boundaries of an inventory unit containing a cherrystem are drawn around the intrusion by BLM, so as to exclude it from the area being considered for wilderness.

In National Outdoor Coalition, 59 IBLA 291, 296 (1981), we held that BLM did not act contrary to law or any established Department policy in recognizing nonwilderness corridors occupied by roads or other manmade intrusions. Though the boundaries of a WSA "containing" a nonwilderness corridor might be irregular as a result of such corridors, we agreed with BLM that section 603(a) did not specify any particular shape for an area that may eventually be recommended for wilderness preservation. Nothing offered by appellant in his statement of reasons compels a different result.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Acting Arizona State Director is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Gail M. Frazier
Administrative Judge

